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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: Pork Antitrust Litigation) File No. 18CV1776
) 21MD2998
) (JRT/JFD)
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)
)
) Minneapolis, Minnesota
) November 18, 2022
) 10:15 A.M.
)
)

BEFORE THE HONORABLE JUDGE JOHN R. TUNHEIM

UNITED STATES DISTRICT COURT JUDGE
AND
MAGISTRATE JUDGE JOHN F. DOCHERTY

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(STATUS CONFERENCE VIA VIDEO CONFERENCE)

1 APPEARANCES

2 For Direct Purchaser
3 Plaintiffs:

Lockridge Grindal Nauen PLLP
JOSEPH C. BOURNE, ESQ.
100 Washington Avenue South
Suite 2200
Minneapolis, MN 55401

Pearson Simon & Warshaw
BOBBY POUYA, ESQ.
MICHAEL H. PEARSON, ESQ.
15165 Ventura Boulevard
Suite 400
Sherman Oaks, CA 91403

8 On behalf of the
9 Consumer Indirect
10 Plaintiffs:

Gustafson Gluek PLLC
DANIEL C. HEDLUND, ESQ.
JOSHUA J. RISSMAN, ESQ.
120 South Sixth Street
Suite 2600
Minneapolis, MN 55402

Hagens Berman Sobol Shapiro
SHANA E. SCARLETT, ESQ.
715 Hearst Avenue, Suite 202
Berkeley, CA 94710

14 On behalf of the
15 Commercial and
16 Institutional Indirect
17 Purchaser Plaintiffs:

Cuneo Gilbert & LaDuka, LLP
ALEC BLAINE FINLEY, ESQ.
4725 Wisconsin Avenue NW
Suite 200
Washington, DC 20016

18 For the Commonwealth of
19 Puerto Rico:

Hausfeld
YELENA DEWALD, ESQ.
600 Montgomery Street
Suite 3200
San Francisco, CA 94111

20 For the Dollar General
21 DAPs:

Sperling & Slater
ALBERTO RODRIGUEZ, ESQ.
DAVID P. GERMAINE, ESQ.
PHILLIP F. CRAMER, ESQ.
55 West Monroe Street
Chicago, IL 69693

23 Sherrard Roe Voigt Harbison
24 CHRISTINA R. B. LOPEZ, ESQ.
25 150 Third Avenue South
 Suite 1100
 Nashville, TN 37201

1 For the Cheney Bros. Carlton Fields
2 DAPs: GARTH T. YEARICK, ESQ.
3 AARON ASA HOLMAN, ESQ.
525 Okeechobee Boulevard
West Palm Beach, FL 33401

4 For the Kroger DAPs: Kenny Nachwalter
5 WILLIAM J. BLECHMAN, ESQ.
1441 Breckell Avenue
6 Suite 1100
Miami, FL 33131

7 For the Topco DAPs: Kaplan Fox & Kilsheimer LLP
8 ROBERT N. KAPLAN, ESQ.
850 Third Avenue
9 New York, NY 10022

10 Marcus & Shapira
11 MOIRA CAIN-MANNIX, ESQ.
One Oxford Centre
35th Floor
12 Pittsburgh, PA 15219

13 For the Sysco DAPs: Boies Schiller Flexner
14 SARAH L. JONES, ESQ.
1401 New York Avenue NW
Washington, DC 20005

15 For the Kraft DAPs: Ahern and Associates, P.C.
16 PATRICK AHERN, ESQ.
590 North Sheridan Road
17 Lake Forest, IL 60045

18 Cadwalader, Wickersham & Taft
19 JACK G. STERN, ESQ.
200 Liberty Street
New York, NY 10281

20 For Nestle DAPs: Nexsen Pruet LLC
21 DAVID C. EDDY, ESQ.
1230 Main Street
22 Suite 700
Columbia, SC 29202

23 For Deft Clemens Food Kirkland & Ellis
24 Group, LLC: DANIEL E. LAYTIN, ESQ.
MAX SAMELS, ESQ.
300 North LaSalle
25 Chicago, IL 60654

1	For Defendant Hormel Foods:	Faegre Drinker Biddle & Reath CRAIG S. COLEMAN, ESQ. 90 South Seventh Street Suite 2200 Minneapolis, MN 55402
2		
3		
4	For Defendant JBS USA:	Spencer LLP JESSICA J. NELSON, ESQ. 100 South Fifth Street Suite 1900 Minneapolis, MN 55402
5		
6		
7		Quinn Emanuel Urquhart & Sullivan SAMI H. RASHID, ESQ. DAVID B. ADLER, ESQ. 51 Madison Avenue 22nd Floor New York, NY 10010
8		
9		
10		
11	For Deft Seaboard Foods:	Stinson LLP PETER J. SCHWINGLER, ESQ. 50 South Sixth Street Suite 2600 Minneapolis, MN 55402
12		
13		
14	For Defendant Smithfield Foods:	Gibson Dunn & Crutcher BRIAN EDWARD ROBISON, ESQ. 2100 McKinney Avenue, Ste 1100 Dallas, Texas 75201
15		
16		
17	For Deft Triumph Foods:	Husch Blackwell CHRISTOPHER A. SMITH, ESQ. ABRAHAM J. SPUNG, ESQ. 190 Carondelet Plaza Suite 600 St. Louis, MO 63105
18		
19		
20	For Deft Tyson Foods:	Axinn Veltrop & Harkrider LLP JAROD TAYLOR, ESQ. 90 State House Square Hartford, CT 06103
21		
22		
23		Axinn Veltrop & Harkrider LLP TIFFANY RIDER ROHRBAUGH, ESQ. 950 F Street NW, 7th Floor Washington, DC 20004
24		
25		

10:15 A.M.

(In open court via video conference.)

THE COURT: Good morning, everyone, or good afternoon depending on where you're at. This is In Re: Pork Antitrust Litigation, 18CV1776 and MDL 21-2998. We have a status conference today and a number of matters to discuss.

Rather than going through everyone noting their appearances, I've asked Ms. Arent to just read the names of those of you that we have noted, so we will have the appearances noted, and if we miss anyone, you can let us know.

Go ahead.

COURTROOM DEPUTY: Okay. We have Bobby Pouya.

MR. POUYA: Good morning.

COURTROOM DEPUTY: Joseph Bourne.

MR. BOURNE: Good morning.

COURTROOM DEPUTY: Michael Pearson. Daniel Hedlund.

MR. HEDLUND: Good morning.

COURTROOM DEPUTY: Joshua Rissman.

MR. RISSMAN: Good morning.

COURTROOM DEPUTY: Shana Scarlett.

MS. SCARLETT: Good morning.

1 COURTROOM DEPUTY: Blaine Finley.
2 MR. FINLEY: Good morning.
3 COURTROOM DEPUTY: Alberto Rodriguez.
4 MR. RODRIGUEZ: Good morning.
5 COURTROOM DEPUTY: Christina Lopez.
6 MS. LOPEZ: Good morning.
7 THE COURT: David Germaine.
8 MR. GERMAINE: Good morning.
9 COURTROOM DEPUTY: Phillip Cramer.
10 MR. CRAMER: Good morning.
11 COURTROOM DEPUTY: Aaron Holman. Garth Yearick.
12 MR. YEARICK: Good morning.
13 COURTROOM DEPUTY: William Blechman. Moira
14 Cain-Mannix. Robert Kaplan.
15 MR. KAPLAN: Good morning, Your Honor.
16 COURTROOM DEPUTY: Sarah Jones.
17 MS. JONES: Good morning.
18 COURTROOM DEPUTY: Jack Stern.
19 MR. STERN: Good morning.
20 COURTROOM DEPUTY: Patrick Ahern.
21 MR. AHERN: Good morning.
22 COURTROOM DEPUTY: David Eddy.
23 MR. EDDY: Good morning.
24 COURTROOM DEPUTY: Daniel Laytin.
25 MR. LAYTIN: Good morning.

1 COURTROOM DEPUTY: Max Samels.
2 MR. SAMELS: Good morning.
3 COURTROOM DEPUTY: Craig Coleman.
4 MR. COLEMAN: Good morning.
5 COURTROOM DEPUTY: David Adler. Jessica Nelson.
6 MS. NELSON: Good morning.
7 COURTROOM DEPUTY: Sami Rashid.
8 MR. RASHID: Good morning.
9 COURTROOM DEPUTY: Peter Schwingler.
10 MR. SCHWINGLER: Good morning.
11 COURTROOM DEPUTY: Brian Robison.
12 MR. ROBISON: Good morning.
13 COURTROOM DEPUTY: Abraham Spung.
14 MR. SPUNG: Good morning.
15 COURTROOM DEPUTY: Christopher Smith.
16 MR. SMITH: Good morning.
17 COURTROOM DEPUTY: Jarod Taylor.
18 MR. TAYLOR: Good morning.
19 COURTROOM DEPUTY: Tiffany Rider Rohrbaugh.
20 MS. ROHRBAUGH: Good morning.
21 THE COURT: Did we miss anyone that wishes to be
22 noted?
23 MR. CLIFFORD PEARSON: Clifford Pearson for the
24 DPPs, Your Honor.
25 COURTROOM DEPUTY: Mr. Pearson, could you say

1 that again more slowly so we can catch it?

2 MR. CLIFFORD PEARSON: Yes. Clifford Pearson for
3 the DPPs.

4 MS. DEWALD: Good morning, Your Honor. This is
5 Yelena Dewald appearing on behalf of the
6 Commonwealth of Puerto Rico.

7 THE COURT: All right. Anyone else? Okay. We
8 have Judge Docherty with us as well on Zoom, I believe.

9 MAGISTRATE JUDGE DOCHERTY: Good morning.

10 THE COURT: All right. We do. All right. Thank
11 you for joining us today and by Zoom. I know everyone is
12 busy, and this is a much more convenient way to have a
13 status conference.

14 The first item on our list here is the case
15 management schedule. We've got some alternative proposals
16 here for deadlines.

17 Judge Docherty, do you want to handle this?

18 MAGISTRATE JUDGE DOCHERTY: Sure. Good morning,
19 everybody. Good to see you all.

20 Yes, there are two proposals for a case
21 management schedule for the next stage of this litigation.
22 They are put before the Court in an attachment 1 to docket
23 number 1606. They differ by about 30 days, which may or
24 may not be a huge amount of time in a case with the
25 schedule that this one has got.

1 But there really is no explanation of why one
2 group prefers this schedule and the other group prefers
3 that schedule, and so I would like to hear either now
4 orally or if you prefer in writing but on a very brief time
5 schedule because what I'm thinking of is that the newly
6 joined Direct Action Plaintiffs' comments on scheduling are
7 due on Monday.

8 So we can do this either way that counsel
9 prefers, but I do need to hear why we're advocating for one
10 schedule rather than another. Is there someone on a
11 shorter time frame, defendants and class plaintiffs, that
12 would like to speak now, or would you like to submit
13 something on short notice?

14 MR. TAYLOR: Your Honor, this is Jarod Taylor for
15 the Tyson defendants.

16 MAGISTRATE JUDGE DOCHERTY: Good morning,
17 Mr. Taylor.

18 MR. TAYLOR: Good morning, Judge Docherty. I
19 think we could go ahead and provide our comments now.

20 MAGISTRATE JUDGE DOCHERTY: That would be great.
21 Thanks.

22 MR. TAYLOR: So the good news as you saw is that
23 the parties are close. The parties are largely aligned, as
24 you noted. It's really just a matter of a 30-day
25 difference. So why couldn't we agree when we're just that

1 far apart is a fair question. A couple of important points
2 along that line are that first, I just want to highlight
3 and reiterate that the classes and the defendants are
4 aligned in believing that a schedule starting in May rather
5 than June is best.

6 The second preliminary point is that the proposal
7 from the defendants and the classes to start in May already
8 represents a compromise on their part. Defendants
9 originally proposed beginning the schedule in April which
10 was around 150 days, just a little more than that, from the
11 October 31st close of fact discovery.

12 Now, the Direct Action Plaintiffs responded with
13 the schedule that they ultimately submitted to the Court
14 with initial reports due in June.

15 Defendants were hopeful that we could reach
16 agreement, where parties often do, at the midpoint which
17 resulted in our proposal presented to the Court of a
18 schedule starting in May. So the next important question
19 is substantively, kind of the procedural history aside, why
20 is it actually better to start in May as both the classes
21 and the defendants propose?

22 Fundamentally it's a matter of one to some
23 extent, plaintiffs have a responsibility to prosecute this
24 case in line with the directive for just and speedy
25 determination.

1 Defendants are confident in this case, and no
2 offense to Your Honors, we enjoy our time before the Court,
3 but our defendants are ready to put our case forward and be
4 out of this case. And we believe that six full months
5 after the close of fact discovery is more than enough time
6 to prepare expert reports.

7 DAPs have had defendants' documents for more than
8 a year, and they shouldn't need more than six months to
9 account for the depositions that have occurred within the
10 discovery period.

11 I understand that DAPs' primary justification for
12 seeking more time is limited discovery that has occurred
13 and is occurring after the October 31st cutoff, but that
14 discovery is *di minimis*. There is one JBS deposition
15 remaining, one Smithfield deposition remaining, part of a
16 Seaboard deposition that will be occurring soon, and then
17 Tyson's witness pursuant to the letter rogatory, but of
18 course we don't know when that will occur.

19 But there is no reason for DAPs' experts to begin
20 working at all until those two and a half extra depositions
21 are complete, and while there are some ongoing DAPs
22 depositions as well, DAPs' experts don't need to wait for
23 those to conclude to begin.

24 They could, for example, rely on interviews with
25 the witnesses that they think would be helpful to their

1 analysis. So in sum, Your Honor, I don't know that there
2 is really that much to it, other than that the classes and
3 defendants both believe May is plenty.

4 That already represents a concession on their
5 part. We wanted to start in April and are willing to go to
6 June, or excuse me, to May without dispute, but June was
7 just a bridge too far for us.

8 MAGISTRATE JUDGE DOCHERTY: All right. Thank
9 you.

10 Who wants to be heard on behalf of the DAPs?

11 MR. KAPLAN: Your Honor, it's Robert Kaplan.

12 MAGISTRATE JUDGE DOCHERTY: Good morning.

13 MR. KAPLAN: Let me be brief. The DAPs are
14 working on a consolidated complaint that is due December
15 5th. That is a tremendous amount of work. We are
16 seriously engaged in that on a day-by-day basis. Document
17 1582, which Your Honor approved, has a schedule of a number
18 of depositions which were to occur after October 31st.

19 I took a deposition on Wednesday, a 30(b)(1).
20 There was a 30(b)(6) of that witness yesterday, as
21 Mr. Taylor mentioned, the Andersland JBS deposition is due
22 December 12. A lot of depositions have occurred in
23 November. So when Mr. Taylor says six months after the
24 close of fact discovery, the fact discovery really didn't
25 close on October 31. There has been a lot of depositions

1 in November.

2 So why do we need what we say six months from
3 December, basically December 1, which is really when the
4 bulk of fact discovery ended? We haven't had prior expert
5 reports. The classes and defendants have had prior expert
6 reports, which based upon my experience, because I do do
7 class actions also, should be fulsome for class
8 certification, so a lot of their work is done.

9 We're starting from afresh. So I was really
10 surprised when defendants wouldn't agree to June 5th. My
11 understanding is the classes don't really object to June
12 5th, if it's June 5th. I have seen e-mails where they say
13 they don't really object to that. So we would respectfully
14 request that we be given until June 5th for the reports.

15 In terms of the overall schedule, it would end on
16 September 30, 2024, rather than August 30, 2024. It would
17 make our lives and our experts' lives much easier, and we
18 would ask respectfully for that accommodation.

19 MAGISTRATE JUDGE DOCHERTY: All right.

20 MR. EDDY: Your Honor? This is David Eddy. I
21 would also like to be heard on behalf of DAPs if I may.

22 MAGISTRATE JUDGE DOCHERTY: Briefly, Mr. Eddy,
23 but then we will need to move on.

24 MR. EDDY: One thing that counsel before me have
25 not informed the Court of is that there were 31 depositions

1 listed on the joint status report to the Court on November
2 3 of DAPs by defendants, 31. 24 of those will occur in
3 December or January. 18 of those have not been scheduled,
4 so they're likely going to have to occur in January.

5 So at the same time the DAPs are working on the
6 complaint, we will be defending numerous depositions. In
7 fact, defendants have not taken the deposition of one of my
8 five clients in this case, so that explains in part why we
9 believe a later schedule for DAPs experts' reports is
10 needed.

11 Thank you, Your Honor.

12 MAGISTRATE JUDGE DOCHERTY: Okay. Thank you,
13 Your Honor.

14 MR. BOURNE: Joe Bourne for the class plaintiffs.

15 MAGISTRATE JUDGE DOCHERTY: Mr. Bourne, you will
16 be the last one to speak because there is a lot of lawyers
17 on this call, and we can't, physically can't hear from
18 everybody. So please make your points and then anything
19 further anyone wants to put in front of me, put it in
20 writing and send it in on Monday and Tuesday of next week.

21 MR. BOURNE: Thank you, Your Honor. The class
22 plaintiffs are fine with either schedule. We attempted to
23 reach an overall agreement but were unable to do so. The
24 one point I wanted to make is, we believe there should be
25 one schedule. It should not be a staggered schedule for

1 the classes and the DAPs.

2 MAGISTRATE JUDGE DOCHERTY: It will be. Thank
3 you all for your input. It was very valuable and helpful,
4 and we will get the master schedule that controls this
5 litigation out as soon as we possibly can. Thanks.

6 THE COURT: Thank you. Let's turn to the next
7 point we wanted to discuss, the liaison counsel issue for
8 the Direct Action Plaintiffs. Noted here that the DAPs
9 would like to discuss this issue.

10 Who would like to speak on this?

11 MR. BLECHMAN: Your Honor, this is William
12 Blechman from Kenny Nachwalter. I have been tasked with
13 addressing this issue for the Court.

14 THE COURT: Okay. Go ahead.

15 MR. BLECHMAN: Thank you very much. Your Honor,
16 I took a look at the Court's order of November 9th, and I
17 note that the Court wants to appoint liaison counsel for
18 the Direct Action Plaintiffs, and I'm concerned that we may
19 have led the Court astray in our response to Pretrial Order
20 No. 1 where in the course of explaining to the Court the
21 differences between class and Direct Action Plaintiffs and
22 in explaining the differences in the fiduciary duties that
23 explains why there can be a lead counsel for the class as
24 opposed to a liaison for Direct Action Plaintiffs, I fear
25 that we have taken the Court off course in focusing on the

1 issue of the fiduciary duties and representation that may
2 get in the way of there being a liaison counsel.

3 I can tell you, Your Honor, from actual
4 experience that the number of lawyers that -- excuse me --
5 of firms that are represented by a given plaintiff or law
6 firm, excuse me, really does not function to get in the way
7 of an effective and efficient administration of an MDL from
8 the point of view of administration if there is liaison
9 counsel, and if that is what the Court is looking for,
10 which I read the Court's order to say, then I know that can
11 work.

12 And the reason I know it can work is, I have been
13 liaison counsel for Direct Action Plaintiffs in six other
14 MDL antitrust cases, including two right now. One in front
15 of Judge Roof MDL 2724, the generics case, and another in
16 front of Chief Judge Sabraw in the Southern District of
17 California, the packaged seafood case.

18 I have done this in a number of cases. In most
19 of those cases, Your Honor, the law firms that represent
20 individual plaintiffs, Direct Action Plaintiffs, represent
21 a number of different plaintiffs like Mr. Kaplan's firm,
22 and in many of those cases there are actually more Direct
23 Action Plaintiffs' law firms than are present in this MDL.

24 I know from the experience that I've had that if
25 what the Court is looking for here is for a single point of

1 contact for the administration of the MDL and for
2 efficiencies and organization and the discharge of those
3 kinds of administrative functions that a single direct
4 action plaintiff law firm or lawyer, I know that that can
5 work from experience.

6 If, however, what the Court is looking for is to
7 actually have a law firm and lawyer that does not represent
8 any of the Direct Action Plaintiffs at all somehow be hired
9 to represent all of the Direct Action Plaintiffs, which I
10 don't think that's what Your Honor has in mind, but I'm not
11 sure, which is why we wanted to talk to you; but if it is
12 what, if that's what the Court has in mind, then I think
13 that presents several insurmountable problems for us in
14 terms of the canon of ethics and fiduciary duty law.

15 And so we wanted to talk to you to understand
16 better what the Court had in mind, and what -- if in the
17 course of our advocacy in the response to PTO 1 we have, we
18 have taken the Court astray with regard to its focus on
19 fiduciary duties, we want to tell the Court that in terms
20 of administration, that does not have to be a factor, and
21 in fact we know that it would not be.

22 THE COURT: Anyone else wish to speak on this? I
23 don't know that I have a particular problem. Mr. Kaplan is
24 certainly a fine lawyer. If everyone wants to do it that
25 way, I was reacting to the writing that suggested that one

1 DAP attorney can't ethically represent all DAPs as liaison
2 counsel, and that was my reaction at the time.

3 And if everyone believes this is appropriate, I
4 guess I don't really have any general problem with it
5 because I don't have a problem with Mr. Kaplan performing
6 the role.

7 MR. BLECHMAN: Your Honor, all the Direct Action
8 Plaintiffs support Mr. Kaplan and his firm serving as
9 liaison counsel. Our discussion in the response to
10 Pretrial Order 1 was intended to focus on the fiduciary
11 duties that constrains the ability for there to be a lead
12 counsel.

13 THE COURT: Right.

14 MR. BLECHMAN: As is in the class situation who
15 operates on behalf of Direct Action Plaintiffs, but in
16 terms of there being a liaison counsel where a lawyer and
17 firm are discharging administrative responsibilities to the
18 Court, we see no impediment in terms of the fiduciary
19 duties that liaison counsel would have in discharging those
20 responsibilities to the Court relative to that lawyer's
21 fiduciary duties to his firm's clients.

22 THE COURT: All right. Thank you. I appreciate
23 that, Mr. Blechman. I will take another quick look at this
24 and issue an order early next week.

25 MR. BLECHMAN: Very well, Your Honor. Thank you.

THE COURT: All right. The scheduling of open depositions, Judge Docherty, do you want to take that?

MAGISTRATE JUDGE DOCHERTY: Yes. I would be happy to. Thank you.

The agenda that was submitted just says the parties will be prepared to discuss this. So once again, I'm just looking for some content. I heard Mr. Eddy earlier speaking on this and Mr. Taylor, and I think it's safe to say I heard two rather different descriptions of the state of affairs as to scheduling of open depositions.

I don't know if Mr. Taylor and Mr. Eddy will speak to this, but who will be speaking to this, please?

MR. TAYLOR: Your Honor, I'm happy to begin again, and happily maybe I will be the one and only, but of course we will see.

MAGISTRATE JUDGE DOCHERTY: Okay. Well, Mr. Taylor, I heard from you there is two and a half open depositions, and I heard from Mr. Eddy, there is -- I don't even remember, but it was a very large number in a very short time.

So help me understand what's going on here.

MR. TAYLOR: To harmonize those, I think the difference was that I was addressing remaining defendant depositions, and Mr. Eddy was addressing remaining DAP depositions. So I don't think any of us were wrong, but we

1 placed different, we give different weights to the
2 relevance of those with respect to the schedule.

3 In terms of the agenda item here, the parties
4 have continued to work on scheduling, and the one or so
5 depositions that the parties may have needed to raise for
6 which scheduling was still outstanding I understand has
7 been resolved, and defendants do not believe anything
8 further is needed from the Court at this point.

9 The parties continue to schedule them
10 cooperatively and will finish these soon.

11 MAGISTRATE JUDGE DOCHERTY: Okay. Is anyone from
12 the class plaintiffs wanting to speak to this issue?

13 MR. BOURNE: Your Honor, the classes don't
14 believe there is anything further necessary to address.

15 MAGISTRATE JUDGE DOCHERTY: Okay. Thank you
16 Mr. Bourne.

17 Anyone from the DAPs wish to address this issue?

18 MR. KAPLAN: No, Your Honor. The one issue has
19 been resolved since this was filed, so I think we are fine.

20 MAGISTRATE JUDGE DOCHERTY: All right. We will
21 check that particular box and will take no further action
22 on it unless alerted by counsel that there is an issue that
23 needs judicial intervention.

24 Thank you all.

25 THE COURT: All right. Thank you.

1 Class certification, I understand we're waiting
2 for some filings today I believe is the deadline, so
3 probably have people working on that to finish that up. We
4 have scheduled the day of January 31st for the class
5 certification hearing.

6 I indicated that I wasn't inclined to view this
7 as an evidentiary hearing but rather simply arguments with
8 whatever evidentiary matter submitted by affidavit. I
9 think when we talked last, the defendants wanted to discuss
10 this issue amongst themselves some more.

11 Anyone want to talk about this before we finally
12 set this?

15 THE COURT: Okay, Mr. Taylor.

24 THE COURT: All right. Four hours would be fine.
25 Do you want to let me know for sure Monday or Tuesday?

1 MR. TAYLOR: Yes, Your Honor. We appreciate your
2 patience.

10 All right. We will plan on four hours, but let
11 me know if you have any alternative suggestion to that.
12 I'm happy to hear anything more that you would like to say.
13 Okay?

14 MR. TAYLOR: Thank you, Your Honor.

15 THE COURT: All right. Anything else anyone
16 wishes to address today?

17 MR. KAPLAN: I would just like to ask Judge
18 Docherty, you mentioned, Your Honor, that there is a filing
19 due on Monday by the DAPs?

20 MAGISTRATE JUDGE DOCHERTY: I was speaking from
21 memory, Mr. Kaplan, but my understanding is that we are
22 still waiting, and it might be Monday. It might be another
23 day. As I say, I'm speaking from memory, but at the first
24 case management conference, we did speak about getting
25 comment or input on scheduling. That's all I was referring

1 to.

2 MR. KAPLAN: Thank you, Your Honor.

3 MR. RASHID: Your Honor, if I may, this is Sami
4 Rashid for JBS USA. I believe Your Honor may be thinking
5 about the submission in the Beef case from the Beef DAPs
6 that will be due on Monday.

7 MAGISTRATE JUDGE DOCHERTY: I know something is
8 due on Monday, so --

9 MR. RASHID: It was DAP related, too, so --

10 MAGISTRATE JUDGE DOCHERTY: Thank you.

11 MR. RASHID: You're welcome.

12 THE COURT: All right. Anything else anyone
13 wishes to raise today?

14 All right. Well, we will get these orders out
15 shortly, and what's our schedule next date for a status
16 conference, Heather? Do you have that handy?

17 COURTROOM DEPUTY: I don't.

18 THE COURT: 15th of December? Okay. I would
19 like to set one about a month or so from now. Is there any
20 date we should avoid? We will do it by Zoom again of
21 course.

22 COURTROOM DEPUTY: December 15th would work.

23 THE COURT: December 15th, ten o'clock in the
24 morning.

25 COURTROOM DEPUTY: You've got a speaking

1 engagement, so maybe 2:00 in the afternoon.

2 THE COURT: All right. How about two o'clock in
3 the afternoon December 15th for our next status conference?

4 MR. TAYLOR: That should be fine, Your Honor.

5 THE COURT: If anyone runs into a major conflict
6 and you need to be part of it, just let us know. We can be
7 flexible on it, but we will set it for that time now.

8 Okay. Thank you, everyone. Appreciate your
9 participating today, and glad we are able to do it by Zoom.
10 Always like to have you here, but it's handy to do it by
11 Zoom, so we appreciate that.

12 Thank you.

13 MR. KAPLAN: Thank you, Your Honor.

14 MR. TAYLOR: Thank you.

15 THE COURT: We will be in recess.

16 **(Court was adjourned.)**

17 * * *

18 I, Kristine Mousseau, certify that the foregoing
19 is a correct transcript from the record of proceedings in
20 the above-entitled matter.

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24 Certified by: s/ Kristine Mousseau, CRR-RPR
25 Kristine Mousseau, CRR-RPR